



8011-01

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88891; File No. SR-NYSE-2020-45]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Temporary Period for Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C

May 15, 2020.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on May 15, 2020, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the temporary period for Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C to end on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 22, 2020. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify the temporary period for Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C to end on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 22, 2020. The current temporary period that these Rules are in effect ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020.

To slow the spread of COVID-19 through social-distancing measures, on March 18, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that, beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading.⁴ Pursuant to Rule 7.1(e), the CEO notified the Board of Directors of the Exchange of this determination.

For the period while the Trading Floor is temporarily closed, the Exchange has modified the rules governing Auctions to add the following Commentaries that are in effect until the

⁴ The Exchange's current rules establish how the Exchange will function fully-electronically. The CEO also closed the NYSE American Options Trading Floor, which is located at the same 11 Wall Street facilities, and the NYSE Arca Options Trading Floor, which is located in San Francisco, CA. See Press Release, dated March 18, 2020, available here: <https://ir.theice.com/press/press-releases/all-categories/2020/03-18-2020-204202110>.

earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020:

- Commentary .01 to Rule 7.35C;⁵
- Commentary .01 to Rule 7.35A; Commentary .01 to Rule 7.35B; and
Commentary .02 to Rule 7.35C;⁶
- Commentary .02 to Rule 7.35A;⁷
- Commentary .03 to Rule 7.35A;⁸
- Commentary .03 to Rule 7.35C;⁹
- Commentary .04 to Rule 7.35A;¹⁰
- Commentary .01 to Rule 7.35;¹¹ and
- Commentary .02 to Rule 7.35B.¹²

⁵ See Securities Exchange Act Release No. 88413 (March 18, 2020), 85 FR 16713 (March 24, 2020) (SR-NYSE-2020-19).

⁶ See Securities Exchange Act Release No. 88444 (March 20, 2020), 85 FR 17141 (March 26, 2020) (SR-NYSE-2020-22).

⁷ See Securities Exchange Act Release No. 88488 (March 26, 2020), 85 FR 18286 (April 1, 2020) (SR-NYSE-2020-23).

⁸ See Securities Exchange Act Release No. 88546 (April 2, 2020), 85 FR 19782 (April 8, 2020) (SR-NYSE-2020-28).

⁹ See Securities Exchange Act Release No. 88562 (April 3, 2020), 85 FR 20002 (April 9, 2020) (SR-NYSE-2020-29).

¹⁰ See Securities Exchange Act Release No. 88705 (April 21, 2020), 85 FR 23413 (April 27, 2020) (SR-NYSE-2020-35).

¹¹ See Securities Exchange Act Release No. 88725 (April 22, 2020), 85 FR 23583 (April 28, 2020) (SR-NYSE-2020-37).

¹² See Securities Exchange Act Release No. 88829 (May 6, 2020), 85 FR 28115 (May 12, 2020) (SR-NYSE-2020-41). The rule text filed with this proposed rule change unintentionally changed the end date of Commentary .01 to Rule 7.35B to May 29, 2020 instead of May 15, 2020. With this proposed rule change, the end date for all Commentaries will be the same.

The Exchange proposes to amend the above-listed Commentaries to extend the end date of such temporary rules to May 22, 2020, which is the last day when the Trading Floor facilities will be fully closed. With this proposed extension, such Commentaries would be in effect until the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 22, 2020. The Exchange is not proposing any substantive changes to these Rules.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Due to social-distancing measures implemented throughout the country, including in New York City, to reduce the spread of COVID-19, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because the Exchange will remain temporarily closed past May 15, 2020. Accordingly, the Exchange believes that the temporary rule changes in effect pursuant to the Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C, which are intended to be in effect during the temporary period while

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

the Trading Floor is closed to prevent the spread of COVID-19. The Exchange is not proposing any substantive changes to these Rules.

The Exchange believes that, by clearly stating that this relief will be in effect through the earlier of the reopening of the Trading Floor facilities or the close of the Exchange on May 22, 2020, market participants will have advance notice of the temporary period during which the Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C will be in effect.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather would extend the period during which Commentary .01 to Rule 7.35; Commentaries .01, .02, .03, and .04 to Rule 7.35A; Commentaries .01 and .02 to Rule 7.35B; and Commentaries .01, .02, and .03 to Rule 7.35C will be in effect. These Commentaries are intended to be in effect during the temporary period while the Trading Floor is closed and currently expire on May 15, 2020. Because the Trading Floor will remain fully closed until May 22, 2020, the Exchange proposes to extend the temporary period to be the earlier of earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 22, 2020.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶ Because the proposed rule change does not:

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

(i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸

A proposed rule change filed under Rule 19b-4(f)(6)¹⁹ normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁰ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The proposal would extend the period during which Commentary .01 to Rule 7.35; Commentaries .01, .02, .03, and .04 to Rule 7.35A; Commentaries .01 and .02 to Rule 7.35B; and Commentaries .01, .02, and .03 to Rule 7.35C will be in effect for one more week, until May 22, 2020, without any substantive changes to these Commentaries. The Exchange has represented that these Commentaries are intended to be in effect during the temporary period while the Trading Floor is closed, and would currently expire on May 15, 2020. The Exchange also has represented that the Trading Floor will now remain fully closed until May 22, 2020. The

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

Commission notes that, without a waiver of the operative delay, the Commentaries would cease to apply while the Exchange's Trading Floor facilities are still closed. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²¹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2020-45 on the subject line.

Paper comments:

²¹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2020-45. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that

you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2020-45, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

J. Matthew DeLesDernier
Assistant Secretary

²² 17 CFR 200.30-3(a)(12), (59).

